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FM SECSTATE WASHDC
TO ALL DIPLOMATIC AND CONSULAR POSTS
SPECIAL EMBASSY PROGRAM

UNCLAS STATE 229052

SIPDIS

E.O. 12958: N/A

TAGS: [CVIS](#)

SUBJECT: PASSAGE OF VWP LEGISLATION: WHERE DO WE GO FROM
HERE?

REF: STATE 210639

¶1. SUMMARY: THE PRESIDENT SIGNED LEGISLATION MAKING THE
VISA WAIVER PILOT PROGRAM PERMANENT. SEVERAL COUNTRIES
HAVE EXPRESSED INTEREST IN BECOMING VWP PARTICIPANTS, AND
SEVERAL POSTS HAVE OFFERED SUGGESTIONS FOR CHANGES TO THE
PROGRAM. GIVEN THE EXTENSIVE PREPARATORY WORK AND
COMPROMISE NEEDED TO OBTAIN A PERMANENT VISA WAIVER
PROGRAM, THE DEPARTMENT DOES NOT ENVISION REQUESTING ANY
ADDITIONAL STATUTORY CHANGES IN THE NEAR FUTURE. END
SUMMARY.

¶2. THE DEPARTMENT INFORMED THE FIELD IN REFTEL THAT THE
PRESIDENT HAD SIGNED HR 3767, THE VISA WAIVER PERMANENT
PROGRAM ACT. THIS LEGISLATION MADE THE VISA WAIVER PILOT
PROGRAM (VWPP) A PERMANENT PROGRAM, NOW KNOWN AS THE VISA
WAIVER PROGRAM (VWP). THE PRESIDENT'S SIGNATURE WAS THE
CULMINATION OF A LONG PROCESS IN WHICH THE DEPARTMENT,
OTHER AGENCIES, MEMBERS OF CONGRESS AND THEIR STAFFS MADE

KNOWN THEIR CONCERNS ABOUT THE PROGRAM AND WHAT CHANGES
THEY WANTED IN THE STATUTE.

FURTHER CHANGES TO VWP LEGISLATION

¶3. AS POSTS WERE ABLE TO SURMISE BASED ON THE SEVERAL
EXTENSIONS OF THE PAROLE PROCEDURE FOR NATIONALS OF WAIVER
COUNTRIES AFTER VWPP AUTHORITY EXPIRED ON APRIL 30,
PASSAGE OF LEGISLATION TO EXTEND OR MAKE PERMANENT THE
VWPP WAS A CLIFFHANGER. THE FATE OF THE PROGRAM RISKED
BEING LEFT FOR AN END-OF-SESSION OMNIBUS WHERE ANYTHING
CAN HAPPEN. PASSAGE OF THE BILL REQUIRED A CONCERTED AND
COORDINATED EFFORT BY SEVERAL OFFICES IN THE DEPARTMENT,
PARTICULARLY IN THE BUREAU OF CONSULAR AFFAIRS, TO KEEP
THE BILL MOVING, TO MINIMIZE UNWANTED AMENDMENTS, AND TO
DEFLECT ATTEMPTS TO DERAIL OR MODIFY IT.

¶4. AT THE OUTSET OF THE PROCESS, THE BUREAU OF CONSULAR
AFFAIRS WORKED CLOSELY WITH STAFF MEMBERS OF THE HOUSE
IMMIGRATION SUBCOMMITTEE, WHICH DRAFTED AND INTRODUCED THE
BILL, TO TRY TO GET IMPORTANT PROVISIONS INTO THE VWP
LEGISLATION, PARTICULARLY THOSE RAISED WITH US BY POSTS.
WHILE STAFF MEMBERS WERE SYMPATHETIC TO MANY OF OUR
REQUESTS, THE SUBCOMMITTEE WAS INUNDATED WITH SPECIAL
INTEREST REQUESTS FROM OTHER AGENCIES AND ORGANIZATIONS.
OUR INTERESTS, WHILE VIEWED SYMPATHETICALLY AND EVEN
FAVORABLY, WERE CAUGHT UP IN THE CAUSES OF EVERY GROUP
WITH ISSUES BEARING ON VWP. AS THE IMPORTANCE OF VWP
BECAME INCREASINGLY APPARENT ON THE HILL, THE BILL TURNED
INTO A "CHRISTMAS TREE," USED TO HANG ALL KINDS OF SPECIAL
INTEREST PROVISIONS, BOTH RELATED AND UNRELATED TO THE VWP
ITSELF. THE ONLY WAY TO OBTAIN PASSAGE OF AN EXTENSION OF
VWPP, LET ALONE A PERMANENT PROGRAM, WAS TO AVOID PRESSING
FOR FURTHER VARIATIONS. VWPP WAS SUFFICIENTLY
CONTROVERSIAL THAT ANY CHANGE OR ENHANCEMENT WAS HIGH RISK
-- THE RISK BEING LOSS OF THE ENTIRE PROGRAM.

¶5. POSTS MAY ALSO BE AWARE THAT GREECE'S STATUS IN THE VWP
WAS A SOURCE OF CONCERN FOR SOME MEMBERS OF CONGRESS. THE
DEPARTMENT WAS REQUIRED TO PROVIDE TO CONGRESS ALL OF THE
DOCUMENTS RELATING TO THE NOMINATION OF GREECE. CONGRESS
WAS PARTICULARLY CONCERNED THAT ALL INTERESTED BUREAUS IN

THE DEPARTMENT AND OTHER AGENCIES HAD HAD AN OPPORTUNITY TO EXPRESS THEIR VIEWS FULLY ON THE NOMINATION OF GREECE.

AN ENORMOUS AMOUNT OF MATERIAL WAS PROVIDED TO CONGRESS IN THREE SEPARATE TRANCHES.

¶6. THE DEPARTMENT IS OVERJOYED FINALLY TO HAVE A PERMANENT VWP. NOW WE HAVE TO IMPLEMENT THE STATUTE, WHICH WILL CONTINUE TO REQUIRE A DELICATE BALANCING OF MANY DIFFERENT INTERESTS. THERE ARE NEW REPORTING REQUIREMENTS TO CONGRESS, INCLUDING THE REQUIREMENT THAT THE ATTORNEY GENERAL REVIEW EVERY VWP COUNTRY'S PARTICIPATION AT LEAST EVERY FIVE YEARS. REPORTS MUST ALSO BE MADE TO CONGRESS ABOUT THE COUNTRIES THAT ARE UNDER CONSIDERATION FOR INCLUSION IN VWP. IN ADDITION, WE HAVE ADDITIONAL RESPONSIBILITIES FOR DATASHARE WITH THE IMMIGRATION AND NATURALIZATION SERVICE (INS) THROUGH THE USE OF INFORMATION TECHNOLOGY.

¶7. OUR SENSE IS THAT CONGRESS INTENDS VERY FIRMLY TO LIMIT THE VWP TO A SINGLE VISA CLASS WITH VERY STRICT REQUIREMENTS AND TO MONITOR THE PROGRAM VERY CLOSELY. GIVEN THIS IMPRESSION AND THE LACK OF APPARENT ENTHUSIASM TO REOPEN THIS ISSUE ON THE HILL BY THOSE WHO WOULD SUPPORT POSITIVE CHANGES, WE BELIEVE THAT IT WOULD BE COUNTER-PRODUCTIVE TO SEEK FURTHER LEGISLATIVE CHANGES AT THIS TIME.

ADDING NEW COUNTRIES

¶8. SOME POSTS HAVE ALREADY EXPRESSED INTEREST IN NOMINATING THEIR HOST COUNTRIES FOR VWP PARTICIPATION. WHILE THE DEPARTMENT WILL CONSIDER ANY NOMINATIONS THAT WE RECEIVE, WE MUST CAUTION POSTS NOT TO EXPECT A QUICK RESPONSE. THE DEPARTMENT MUST CONSULT WITH THE INTERAGENCY WORKING GROUP THAT IS RESPONSIBLE FOR OVERSEEING THE VWP TO BEGIN IMPLEMENTATION OF THE NEW REQUIREMENTS OF HR 3767. WE EXPECT THAT IMPLEMENTATION OF THE NEW REQUIREMENTS, REVISIONS TO THE NIV SOFTWARE TO CAPTURE REFUSAL STATISTICS IN A DIFFERENT MANNER, REVIEW OF THE CONSULAR CONSOLIDATED DATABASE TO DETERMINE IF ITS OUTPUT MEETS OUR NEEDS, COORDINATION OF THE MANY NEW REPORTING REQUIREMENTS, AND CONSULTATION WITH INS ON DATASHARE WILL OCCUPY THE INTERAGENCY GROUP FOR SOME TIME.

¶9. SOME MEMBERS OF CONGRESS HAVE ALSO EXPRESSED CONCERN ABOUT THE LACK OF DIVERSITY IN THE VWP; I.E., EVEN THOUGH THE NATIONALITIES INVOLVED ARE MUCH MORE DIVERSE IN THEIR

ETHNIC MAKEUP THAN EVER BEFORE, IT IS STILL THE CASE THAT 22 OF THE 29 PARTICIPATING COUNTRIES ARE IN EUROPE. WE DO NOT FORESEE THE ADDITION OF NEW COUNTRIES TO THE VWP IN THE NEAR-TERM, SINCE WE DO NOT BELIEVE CONGRESS IS IN FAVOR OF EXPANSION OF THE PROGRAM.

¶10. POSTS SHOULD CONTINUE TO REPORT THE HOST COUNTRY NATIONAL (HCN) REFUSAL STATISTICS IF THEY BELIEVE THAT A COUNTRY IS CLOSE TO MEETING, OR MEETS, THE REFUSAL RATE CRITERION (NO MORE THAN A 3% REFUSAL RATE FOR HCNS APPLYING FOR B VISAS, EXCLUDING 221(G) REFUSALS). THIS IS REPORT 11E ON THE NIV SYSTEM. POSTS SHOULD SEND THE REPORTS EVERY QUARTER VIA A CABLE SLUGGED FOR CA/VO/F/I.

¶11. WE GENERALLY DO NOT RELEASE EXACT REFUSAL RATES. SHOULD HOST GOVERNMENTS APPROACH POSTS WITH A REQUEST TO PROVIDE THE "VWP REFUSAL RATE", WE RECOMMEND AGAINST PROVIDING THE EXACT RATE. INSTEAD, POSTS SHOULD RESPOND THAT REFUSAL RATES ARE MAINTAINED FOR INTERNAL DEPARTMENT USE ONLY, AND THAT THE DEPARTMENT WILL ADVISE THE HOST COUNTRY (VIA POST) WHEN THE REFUSAL RATE AND OTHER INITIAL CRITERIA HAVE BEEN MET FOR NOMINATION PURPOSES.

INTERAGENCY NOMINATION AND APPROVAL PROCESS

¶12. THE VWP NOMINATION PROCESS IS BASED ON A 1997 PROTOCOL ESTABLISHED BETWEEN THE DEPARTMENTS OF STATE AND JUSTICE. THE DEPARTMENT OF STATE (DOS) INITIATES THE PROCESS BY ADVISING THE DEPARTMENT OF JUSTICE (DOJ) OF ITS INTENT TO NOMINATE A COUNTRY FOR CONSIDERATION FOR INCLUSION IN THE VWP. ONCE DOS HAS ADVISED DOJ OF ITS INTENT TO NOMINATE A COUNTRY, AN INTERAGENCY TEAM REVIEWS THE NOMINATION, FOCUSING ON THE IMPACT INCLUSION OF THE COUNTRY IN VWP WOULD HAVE ON LAW ENFORCEMENT, NATIONAL SECURITY, AND IMMIGRATION CONTROL. IF NO CLEARLY DISQUALIFYING OBJECTIONS ARE RAISED DURING THIS PRENOMINATION REVIEW, THE SECRETARY OF STATE SUBMITS A FORMAL WRITTEN NOMINATION TO THE ATTORNEY GENERAL.

¶13. AFTER A COUNTRY IS FORMALLY NOMINATED, INS LEADS A SITE TEAM OF REPRESENTATIVES FROM INTERESTED AGENCIES TO VISIT THE NOMINATED COUNTRY TO REVIEW PASSPORT AND DOCUMENT SECURITY, BORDER AND IMMIGRATION CONTROLS, LAW ENFORCEMENT POLICIES AND PRACTICES, POLITICAL AND ECONOMIC CONDITIONS, AND OTHER LAW ENFORCEMENT, IMMIGRATION, AND

NATIONAL SECURITY CONCERNS. BASED ON THE PRENOMINATION REVIEW AND SITE VISIT, THE INTERAGENCY WORKING GROUP SUBMITS A RECOMMENDATION TO THE ATTORNEY GENERAL, IN WHOM THE LAW VESTS ULTIMATE AUTHORITY TO APPROVE VWP PARTICIPATION.
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